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In re Application of Frank C. Smith, Jr.	:	DECISION ON PETITION
Appl. No. 10/701,146	:	TO WITHDRAW FINALITY
Filed: November 4, 2003	:	OF OFFICE ACTION
For: CARGO ORIENTED	:	UNDER 37 CFR 1.181
PERSONAL AIRCRAFT	:	

This is a decision on Applicant's Petition under 37 CFR 1.181 filed on January 20, 2009 to Withdraw the Finality of the Office action mailed on October 21, 2008, consider the Request for Continued Examination (RCE) filed January 20, 2009 be regarded as a response to a Non-Final Office action and the fee filed with the RCE to be refunded.

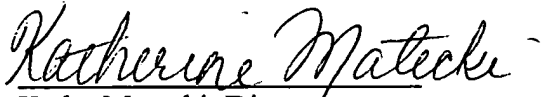
The Petition is **DISMISSED**.

On March 19, 2008, the Office mailed a Non-Final Office action rejecting all of the claims. On June 6, 2008, applicant submitted an amendment to the claims and arguments. On October 21, 2008, the Office mailed a Final Office action including an additional reference of Burnelli. On November 21, 2008, applicant filed an amendment with arguments and a request that the finality of the Office action of October 21, 2008 be removed as premature. On December 4, 2008, the Office mailed an Advisory action stating that the Amendment will not be entered and failing to address applicant's request to withdraw the finality. On January 20, 2009, applicant filed a Request for Continued Examination (RCE) and a petition under 37 CFR 1.181 to withdraw the finality of the Office action of October 21, 2008. The petition also includes a request for refund of the RCE fee and a request to treat the RCE as a response to the Office action of October 21, 2008.

The record shows that the Request for Continued Examination (RCE) filed on January 20, 2009 and a fee in the amount of \$405.00 were timely submitted after the Final rejection. It was processed to withdraw the finality of the Office action of October 21, 2008 and the after final amendment filed on November 21, 2008 was entered in accordance to Rule 37 CFR 1.114 and MPEP 706.07 (h) which states that "the Office will withdraw the finality of any Office action and the submission will be entered and considered." Therefore, the petition filed under 37 CFR 1.181 to withdraw the finality of the office action of October 21, 2008 is moot based on

the submission of the RCE. The RCE fee will not be refunded as it was a required part of the RCE submission.

Any questions regarding this decision should be directed to Michael Mansen at 571-272-6608.

A handwritten signature in cursive script that reads "Katherine Matecki".

Kathy Matecki, Director
Technology Center 3600
571-272-5250

mrm/lm 12/10/09

LM